

20 *Ownership and Control*

C O N T E N T S

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SUBJECT: Ownership and Control Review of Permit Application

DATE: February 1, 1996

This procedure shall be utilized for the ownership and control reviews of every *Surface Mining Application* (MR-4), *Application for Transfer, Assignment or Sale of a permit* (MR-19A), *Notification of Permittee Merger and/or Name Change* (MR-19B), *Application for Operator Assignment* (MR-19), and *Notification of Change of Owners, Officers, Directors or Partners* (MR-19C) submitted.

1. Upon receipt of an application, the Ownership and Control (“O/C”) reviewer will review the application and all other documentation for completeness and accuracy.
2. The O/C reviewer will:
 - complete the appropriate checklist to determine if applicant has submitted information required in the Surface Mining Reclamation Regulations.
 - compare the information provided in the application with information currently in the Applicant Violator System (“AVS”), the WV State System (“ERIS”), and the WV Secretary of State System (“SOS”).
 - Request a recommendation from the AVS to determine if applicant is permit blocked for any reason.
3. If the O/C reviewer determines that the application is not complete, if discrepancies are found, or if a permit block is found, a correction sheet will be prepared and provided to the applicant.
4. After the O/C reviewer receives the applicant’s response to the corrections, all new information provided will be reviewed for completeness and accuracy.
5. If the O/C reviewer determines the application to be complete and accurate and no permit blocks are found, the O/C reviewer shall prepare a signoff sheet. *Note: The O/C signoff sheet is the same as the correction sheet with the exception that the reviewer checks the box indicating “the o/c portion of the application appears to be complete and accurate” and signs in the designated space.*
6. After the O/C reviewer prepares a signoff sheet, all checklists, computer documents, correction sheets, and the signoff sheet shall be placed in the back of the Facts and Findings folder of the application.

SUBJECT: Ownership and Control Review of Quarry Application (MR-25) and Quarry Transfer (MR-19Q)

DATE: February 1, 1999

This procedure shall be utilized for the ownership and control reviews of every *Minerals Other Than Coal Application* (MR-25) and every *Application for Transfer, Assignment or Sale of Quarry Permit* (MR-19Q).

1. Upon receipt of an application, the Ownership and Control (“O/C”) reviewer will review the application and all other documentation for completeness and accuracy.
2. The O/C reviewer will:
 - complete the appropriate checklist to determine if applicant has submitted information required.
 - compare the information provided in the application with information currently in the WV State System (“ERIS”), and the WV Secretary of State System (“SOS”) and the WV Forfeiture List.
 - ensure that 100% of the ownership of each level of the applicant’s ownership chain is addressed. (A diagram of the ownership chain may be requested as part of the application.) In addition, the reviewer will ensure that officers and directors are identified for each corporate entity listed in the applicant’s ownership chain.
3. If the O/C reviewer determines that the application is not complete, if discrepancies are found, or if a permit block is found, a correction sheet will be prepared and provided to the applicant.
4. After the O/C reviewer receives the applicant’s response to the corrections, all new information provided will be reviewed for completeness and accuracy.
5. If the O/C reviewer determines the application to be complete and accurate and no permit blocks are found, the O/C reviewer shall prepare a signoff sheet. *Note: The O/C signoff sheet is the same as the correction sheet with the exception that the reviewer checks the box indicating “the o/c portion of the application appears to be complete and accurate” and signs in the designated space.*
6. After the O/C reviewer prepares a signoff sheet, all checklists, computer documents, correction sheets, and the signoff sheet shall be placed in the back of the Facts and Findings folder of the application.

SUBJECT: Centralized Ownership and Control Files

DATE: February 18, 1999

A Centralized Ownership and Control File (COCF) is the MR-20 form which identifies all the owners and controllers of permit holding companies. Approved COCF's may be referenced in MR-4, MR-19, and/or MR-19A applications. The West Virginia Surface Mining Reclamation Regulations provide for the COCF under §38.2.3.1.o.

The application is submitted in the name of the parent company (the company one level above the highest permit holding company in the chain of ownership). The first step in establishing a COCF is a meeting with personnel in the DEP headquarters. At the time of the meeting, the procedures and requirements will be fully explained and the MR-20 form given to the applicant. The MR-20 is not generally available as other DEP forms are, because the initial meeting is crucial to a timely review.

After a COCF is submitted for review, DEP will assign one person in the Ownership and Control Unit to review, approve and maintain the file. It is preferred that the applicant designate one person to be the COCF contact person, and that the contact person actually be a company representative, although some companies prefer to name a consultant to this position. Part of the rationale behind the use of the COCF is the facility of maintaining accurate information on the companies when only 2 individuals are involved.

After the review of the COCF has been completed and the file is approved, an applicant covered by the file may reference the COCF instead of including complete ownership and control information in each application submitted. During the comment period for any application that references an approved COCF, it is the applicant's responsibility to ensure that identical copies of the file are delivered to the appropriate courthouse(s) and regional office(s). COCF's are **NOT** to be left in courthouses or regional offices after the comment period expires.

In the event an applicant chooses to correct an application in process (i.e., one that contains complete ownership and control information and has been or is being advertised) by referencing an approved COCF, the application must be re-advertised (one time, ten-day comment period).

The Permittee must update and recertify all information, **including permit history**, in the COCF at least every 90 days after approval, or within 15 days of a change

in information. When information is updated to make changes before the 90-day certification is due, the next certification will be due 90 days from the date of the most recent certification. Also, with an approved COCF, a Permittee will no longer be required to submit ownership and control update letters in applications. Accordingly, Permittees holding approved COCF's are not required to submit the MR-19C (Annual Ownership and Control Update) on a yearly basis, although this will still be required in the event of issuance of a Cessation Order.

Permittees having approved files will be required to submit a completed MR-19B (Notification of Merger or Name Change) in addition to updating the COCF to reflect such changes when appropriate. This application requires an advertisement and thirty-day comment period.

Having a COCF is a privilege. If the Permittee does not recertify the information in the COCF within a 90-day period, the Permittee will be afforded a 30-day extension. If the Permittee has not updated the COCF within the extended amount of time, the COCF will be considered null and void. If the Ownership and Control Unit becomes aware of any changes and the Ownership and Control contact person has not been notified of such pending changes, the Permittee will be contacted by certified letter giving ten (10) days from receipt of such letter to update the COCF. If nothing is submitted within the allotted time, the COCF will be considered null and void. There may be case-specific instances and extreme circumstances that warrant the Ownership and Control Unit waiving this provision.

SUBJECT: General Procedures for Ownership and Control in ERIS and AVS

DATE: May 1, 1995

This procedure shall be utilized when discrepancies exists with the ownership and control data between:

- AVS and ERIS; or
 - AVS/ERIS and the application being reviewed.
1. When an entity is listed in AVS and ERIS but not identified in the application being reviewed, the applicant shall be notified in writing of any discrepancies between the application and the AVS and ERIS.
 2. Entities omitted from application shall remain as an owner/controller in AVS and ERIS until end dates are sufficiently documented. Application is corrected by:
 - including the entities initially omitted; *or*
 - applicant submits documentation establishing end date(s).
 3. Requests by O/C reviewers for changes in AVS and/or ERIS shall include the following and shall be forwarded to headquarters as soon as the data is verified:
 - Database Change Request;
 - Copy of documentation supporting the change; and
 - Screen print of AVS and ERIS indicating the specific changes to be made.

SUBJECT: Proper Notification of Ownership or Control Changes

DATE: July 1, 1999

An approved **operator** will complete a new MR-19 when the following has occurred in ownership and/or control (*officers and/or owners*):

- 50% or more of ownership change in operator or it's owner
- Less than 50% change in ownership in operator or it's owner but the percentage is the largest block of stock owned (i.e. no one with 50% or more ownership)
- **All** of the officers for the operator or it's owner have changed

Include changes in all levels of the organizational structure where applicable

A **permittee** will complete MR-19A (marked ownership and control changes only) when the following changes in ownership and/or control (*officers and/or owners*) has occurred:

- 50% or more of ownership change in permittee or it's owner
- Less than 50% change in ownership in permittee or it's owner but the percentage is the largest block of stock owned (i.e. no one with 50% or more ownership)
- **All** of the officers for the permittee or it's owner have changed

Include changes in all levels of the organizational structure where applicable

APPROVAL: The regional office will prepare an approval letter and forward to Headquarters for final approval and signature. A MR-2 (permit face) will not be issued.

Permittee and/or operator shall complete MR-19C when the following changes in ownership or control (*officers and/or owners*) occurs:

- Any changes in officers and/or directors
- 10 to 49% of ownership changes

When name changes or mergers occur with the permittee, a MR-19B form must be completed.

SUBJECT:	Procedures for Secretary of State's Database
DATE:	May 15, 1995

On July 1, 1997, the West Virginia Secretary of State's (SOS) office instituted a fee of \$15 to make changes to company records which are not submitted in conjunction with the Annual Corporate Return. Because of this new fee and the fact, under state law, corporations are only required to update information with the SOS once a year, we are no longer requiring companies to update SOS due to permit review discrepancies.

You should continue to check the SOS database. This is to insure that applicants are active companies (they do not have a closed status) and registered to do business in West Virginia (unless they are sole proprietorships or general partnerships). The officers list should also be reviewed; however, only a major discrepancy in the SOS officer listing and the application listing should be questioned (i.e. if an ended officer is listed in SOS and a new officer is listed in the application, do not consider this a correction). But, if a new officer (an individual which has never been listed in AVS and/or ERIS) is listed in SOS and the list in the application does not have this individual, then this should be considered a correction.

This procedure supersedes the policy issued on February 3, 1993 and a procedure (updated), called "Questions and Answers: Standard Application, Ownership and Control Unit".

**OWNERSHIP/CONTROL INFORMATION CHECKLIST
(INDIVIDUAL or SOLE PROPRIETORSHIP)**

APPLICANT: _____ APPLICATION #: _____

INDIVIDUAL: _____

SOCIAL SECURITY #: _____ AVS ENTITY ID #: _____

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
1. Has the following information been provided?			
Name	_____	_____	_____
Street address	_____	_____	_____
FEIN/SSN	_____	_____	_____
Ownership/control relationship to applicant	_____	_____	_____
Location in organizational structure	_____	_____	_____
Date title/position was assumed	_____	_____	_____
Official title/position	_____	_____	_____
Beginning date of ownership	_____	_____	_____
Percentage of ownership	_____	_____	_____
2. Have the following been checked?			
AVS	_____	_____	_____
MSHA R-31	_____	_____	_____
ERIS	_____	_____	_____
Forfeiture List	_____	_____	_____
3. Have all pending applications and/or all surface mine operations owned/controlled in the last five years by the above been identified?	_____	_____	_____

Comments: _____

REVIEWER: _____ DATE: _____

**OWNERSHIP/CONTROL INFORMATION CHECKLIST
(BUSINESS STRUCTURE)**

APPLICANT: _____ APPLICATION #: _____

COMPANY NAME: _____

AVS ENTITY ID #: _____

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
1. Has the following information been provided?			
Address	_____	_____	_____
FEIN	_____	_____	_____
MSHA number (if it holds or operates on permits)	_____	_____	_____
Date of MSHA issuance	_____	_____	_____
Relationship to applicant	_____	_____	_____
% Ownership	_____	_____	_____
Location in organizational structure	_____	_____	_____
2. Have the following been identified for this company?			
Officers (2 or more)	_____	_____	_____
Directors (1 or more)	_____	_____	_____
Owners	_____	_____	_____
3. Have at least two (2) partners, members or managers been identified?	_____	_____	_____
4. Has 100% of the stock of the business entity been accounted for?	_____	_____	_____
5. Have the following been checked?			
AVS	_____	_____	_____
MSHA R-31	_____	_____	_____
ERIS	_____	_____	_____
Forfeiture List	_____	_____	_____
Secretary of State	_____	_____	_____
6. Have all surface mine operations owned/controlled in the last five years by the above been identified:			
Company Name	_____	_____	_____
Address	_____	_____	_____
Permit number	_____	_____	_____
State	_____	_____	_____
FEIN	_____	_____	_____
MSHA number	_____	_____	_____
Date of MSHA issuance	_____	_____	_____
Relationship to applicant	_____	_____	_____
7. Pending applications of the above listed by application number and state:	_____	_____	_____

Comments:

REVIEWER: _____ DATE: _____

OWNERSHIP/CONTROL INFORMATION CHECKLIST

_____ **MR-4** _____ **MR-19** _____ **MR-19A**

APPLICANT: _____		APPLICATION #: _____		
		<u>YES</u>	<u>NO</u>	<u>N/A</u>
1.	Applicant's:			
	Complete Name (no abbreviations)	_____	_____	_____
	Street address	_____	_____	_____
	Phone	_____	_____	_____
	FEIN or SSN	_____	_____	_____
	MSHA #	_____	_____	_____
2.	Resident Agent's:			
	Name (no initials)	_____	_____	_____
	Street address	_____	_____	_____
	Phone	_____	_____	_____
	FEIN or SSN	_____	_____	_____
3.	Abandoned Mine Land Payer's:			
	Name	_____	_____	_____
	Street address	_____	_____	_____
	Phone	_____	_____	_____
	FEIN or SSN	_____	_____	_____
4.	The permit information included on Table 1 matches AVS and ERIS	_____	_____	_____
5.	Does applicant have an approved Centralized File?	_____	_____	_____
	If yes, is copy of the last certification of the central file and the central file approval letter included?	_____	_____	_____
6.	Type of business organization?	_____	_____	_____
	Are appropriate documents attached?	_____	_____	_____
7.	Does applicant own all of the coal to be mined?	_____	_____	_____
	If no, have all persons owning and controlling coal to be mined and having the right to receive it after mining or having the authority to determine the manner in which the surface mining operation is conducted been identified.	_____	_____	_____
8.	a) Have pending applications and/or surface mine operations owned/controlled in the last five years been identified:	_____	_____	_____
	b) Has information in Question A-12 or A-14 been provided for each operation identified?	_____	_____	_____
9.	Has applicant or any subsidiary, affiliate, or persons owned or controlled or under common control or ownership or ownership with the applicant had:			
	A permit suspended or revoked in the preceding five years?	_____	_____	_____
	A bond forfeited?	_____	_____	_____
	If yes, has all information pertaining to the forfeiture been identified?	_____	_____	_____

- | | | | | |
|-----|---|-----|-----|-----|
| 10. | a) Have violations incurred by the applicant in the last three years been listed? | ___ | ___ | ___ |
| | b) For violations listed, has all requested information been provided? | ___ | ___ | ___ |
| | | | | |
| 11. | a) Have unabated cessation orders, or unabated air or water quality violation notices, received prior to the application date by surface mining operations owned or controlled by the applicant or by any person who owns or controls the applicant, been listed? | ___ | ___ | ___ |
| | b) If yes, has all requested information been provided for each unabated violation? | ___ | ___ | ___ |
| | | | | |
| 12. | For 19A's only – if the company plans to retain existing operation, is the "Retain Existing Operator" form included for each operator listed in the databases? | ___ | ___ | ___ |
| | If they do not plan to keep the existing operator, is a "Notice to Cease" form included for each operator in the database? | ___ | ___ | ___ |
| | | | | |
| 13. | For property information, has the surface owner, mineral owner, leasehold interest and/or real estate purchaser been identified? | ___ | ___ | ___ |
| | | | | |
| | For SMA only: If any of the entities listed in the property information are business entities and not individuals, have the names and addresses been provided for each of the following? | | | |
| | Officers | ___ | ___ | ___ |
| | Directors | ___ | ___ | ___ |
| | Owners of 10% or more | ___ | ___ | ___ |
| | Partners | ___ | ___ | ___ |
| | | | | |
| 14. | Has a certified statement been provided for applicant, permittee and/or operator?(Section E) | ___ | ___ | ___ |

COMMENTS _____

REVIEWER: _____ DATE: _____

**OWNERSHIP/CONTROL INFORMATION CHECKLIST
NOTIFICATION OF PERMITTEE MERGER AND/OR NAME CHANGE
MR-19B**

APPLICANT: _____

APPLICATION #: _____

	YES	NO	N/A
1. Current Permittee Name	___	___	___
2. Applicant's Name	___	___	___
Address	___	___	___
Phone	___	___	___
FEIN or SSN	___	___	___
3. Resident Agent's Name	___	___	___
Address	___	___	___
Phone	___	___	___
FEIN or SSN	___	___	___
4. Abandoned Mine Lands Payer's Name	___	___	___
Address	___	___	___
Phone	___	___	___
FEIN or SSN	___	___	___
5. Is information regarding name, title, beginning and/or ending dates for all owners/controllers listed in section 4?	___	___	___
6. Is certified documentation regarding business structure from Office of Secretary of State attached and/or a certified copy of the merger documents attached?	___	___	___
7. Does applicant wish to retain existing operators approved by DEP? If yes, is Attachment B-5 included?	___ ___	___ ___	___ ___
8. Is the completed sample advertisement included?	___	___	___
9. Has a bond change rider or replacement bond been received and approved?	___	___	___
10. Has a new certificate of insurance been received?	___	___	___
11. Has a certified statement been included?	___	___	___
12. Have all current permits (including prospects) been listed on Table 1?	___	___	___
13. Does the permit information listed on Table 1 match AVS and ERIS?	___	___	___
14. Has the certificate of publication for the advertisement been received?	___	___	___
COMMENTS: _____			

REVIEWER: _____ DATE: _____

OWNERSHIP/CONTROL INFORMATION CHECKLIST
ANNUAL UPDATE/NOTIFICATION OF CHANGE OF OWNERS
MR-19C

APPLICANT: _____ APPLICATION #: _____

If a central file covers this applicant, forward application to appropriate individual assigned to that central file for review and approval.

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
1. Applicant/Permittee Name (no abbreviations)	_____	_____	_____
Address	_____	_____	_____
Phone	_____	_____	_____
FEIN or SSN	_____	_____	_____
2. Resident Agent Name	_____	_____	_____
Address	_____	_____	_____
Phone	_____	_____	_____
FEIN or SSN	_____	_____	_____
3. AML Payer Name	_____	_____	_____
Address	_____	_____	_____
Phone	_____	_____	_____
FEIN or SSN	_____	_____	_____
4. The permit information included on Table 1 matches AVS and ERIS	_____	_____	_____
5. Has the secretary certified the changes or is supporting documentation included?	_____	_____	_____
6. Have all owners, members, officers, directors, managers, and/or partners which are affected by this application been listed?	_____	_____	_____
If yes, have the following been listed for each?	_____	_____	_____
Title	_____	_____	_____
Beginning Date	_____	_____	_____
Ending Date	_____	_____	_____
7. For all new individuals or entities listed, has the following been provided:			
Name (no initials)	_____	_____	_____
Address	_____	_____	_____
Phone	_____	_____	_____
FEIN or SSN	_____	_____	_____
Relationship to applicant	_____	_____	_____
Location in Organizational Structure	_____	_____	_____
Title/Position	_____	_____	_____
Date Position Assumed	_____	_____	_____
Beginning Date of Affiliation	_____	_____	_____
% of Ownership	_____	_____	_____
Beginning Date of Ownership	_____	_____	_____

8. For each business entity listed in questions A6-A11, has the following been provided?
- | | | | |
|--|-------|-------|-------|
| Name of Entity | _____ | _____ | _____ |
| Address | _____ | _____ | _____ |
| Phone | _____ | _____ | _____ |
| FEIN | _____ | _____ | _____ |
| Relationship to Applicant | _____ | _____ | _____ |
| For each entity listed above, has a separate checklist been completed? | _____ | _____ | _____ |
9. For newly identified entities listed in A6 through A11, have all pending applications and/or surface mine operations owned/controlled in the last five years been identified?
- | | | | |
|--------------------------------------|-------|-------|-------|
| Name | _____ | _____ | _____ |
| Address | _____ | _____ | _____ |
| Phone | _____ | _____ | _____ |
| FEIN or SSN | _____ | _____ | _____ |
| Permit Number | _____ | _____ | _____ |
| Regulatory Authority Issuing Permit | _____ | _____ | _____ |
| Applicant/Permittee Name | _____ | _____ | _____ |
| Operator Name | _____ | _____ | _____ |
| MSHA Number | _____ | _____ | _____ |
| MSHA issuance date | _____ | _____ | _____ |
| Relationship to Applicant | _____ | _____ | _____ |
| Location in Organizational Structure | _____ | _____ | _____ |
| % of Ownership | _____ | _____ | _____ |
| Beginning Date of Ownership | _____ | _____ | _____ |
10. Has newly identified individual or entity listed in questions A6 through A11 had a permit suspension or permit revoked?
If yes, is question B1 completed?
- | | | |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
11. Is signature page signed?
Is this individual listed in the databases?
- | | | |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

COMMENTS: _____

REVIEWER: _____ DATE: _____

Division of Mining and Reclamation Ownership and Control Correction / Sign-off Sheet

Applicant: _____ SMA/Permit No: _____

Application Type: _____ Regional Office: _____

The undersigned has reviewed the ownership and control data supplied in the above referenced application and finds as follows:

- () The O/C portion of the application appears to be complete and accurate.
- () The O/C portion of the application is incomplete and/or inaccurate for the following reason(s):
- () The applicant is “permit blocked” for the following reason(s):

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

COMMENTS: _____

Ownership and Control Reviewer

Date _____

Division of Mining and Reclamation COCF Correction /Sign-off Sheet

Applicant: _____ SMA/Permit No: _____

Application Type: _____ Regional Office: _____

The undersigned has reviewed the ownership and control data supplied in the Centralized Ownership and Control File (COCF) by _____, parent company of the above-named applicant, and finds as follows:

- () The COCF appears to be complete and accurate.
- () The COCF appears incomplete and/or inaccurate for the following reason(s):
- () The applicant is “permit blocked” for the following reason(s):

[illegible]

COMMENTS: _____

COCF Reviewer

Date _____